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REPORT OF THE MEETING OF STATES PARTIES

Prepared by the Secretariat

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I. INTRODUCTION

A. Convening of the Meeting

1. The Meeting of the States Parties to the 1982 United Nations Convention on the Law of the Sea (hereinafter referred to as the "Convention") was convened in accordance with article 319, paragraph 2 (e), of the Convention and the decision taken at its previous Meeting. 1/ Pursuant thereto, and in accordance with the provisional rules of procedure adopted by the Meeting of States Parties, invitations to participate in the Meeting had been addressed by the Secretary-General of the United Nations to all States Parties to the Convention. Invitations to participate as observers were addressed to other States, and to entities referred to in article 305, paragraphs (c), (d), (e) and (f) of the Convention, observers at the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea and to the specialized agencies of the United Nations, the International Atomic Energy Agency (IAEA) and several non-governmental organizations.

B. Opening of the Meeting

2. The Meeting was held in New York from 15 to 19 May 1995 to deal with organizational matters relating to the International Tribunal for the Law of the Sea.

3. The Meeting was opened by the President, Mr. Satya N. Nandan (Fiji).

C. Attendance

4. On the basis of delegations that attended and/or those that had submitted credentials or notifications, the following attendance was recorded: (a) 46 States Parties; (b) 55 States observers; (c) 4 observers from specialized agencies and United Nations bodies; (d) 1 entity referred to in annex IX of the Convention; (e) 3 intergovernmental organizations; and (f) 2 non-governmental organizations. The Credentials Committee, in accordance with the rules of procedure for the Meeting of States Parties, will review the credentials at the next Meeting and report to the plenary.

D. Documentation

5. In addition to the documentation available at the previous Meeting, the documents before the Meeting were: report of the Meeting of States Parties (SPLOS/3); informal proposals for the organization of work (note from the President) (SPLOS/CRP.1); agenda for the Meeting of States Parties, as adopted by the previous Meeting (SPLOS/1/Rev.1); provisional rules of procedure of the Meeting of States Parties, as revised (SPLOS/2/Rev.1) and report of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea regarding practical arrangements for the establishment of the Tribunal, in four volumes (LOS/PCN/152,

vols. I-IV). Also available was the draft budget for the first financial period of the International Tribunal for the Law of the Sea - Preliminary Estimates (LOS/PCN/142).

II. CONDUCT OF BUSINESS

A. Organization of work

6. The President of the Meeting welcomed participants. Referring to the agenda for the Meeting (SPLOS/1/Rev.1), he noted that at the previous Meeting the consideration of agenda items 1-3 and 8 had been completed; agenda items 5, 6 and 9 had been deferred for later consideration; agenda item 4 had been partially considered; and he had made proposals regarding agenda item 7, on the organization of work, in conference room paper SPLOS/CRP.1.

7. The President explained his proposals for the organization of work as contained in conference room paper SPLOS/CRP.1. He proposed that as a first order of business the Meeting should consider the provisional rules of procedure and adopt them. He called upon the regional groups to consult among themselves and for each group to nominate one Vice-President, with the exception of the Asian Group, since the current President was from that region. He indicated that he would consult with delegations in the appointment of a Credentials Committee and would propose a slate of candidates for that purpose. The Meeting approved the proposals.

8. Attention was drawn by the President to the report of the Preparatory Commission and its recommendations, noting that consideration of the report constituted the most substantive part of the work of the Meeting. While the Preparatory Commission had made recommendations on some items, others had been referred directly to the Meeting of States Parties. It was decided that the report would be taken up later following consideration of other items.

9. It was noted that the administrative arrangements for the Tribunal during the start-up phase were important and needed to be resolved during the Meeting. The Meeting agreed to defer consideration of the question of the composition of the Tribunal until it was clearer as to which States would be parties to the Convention at the time of the election of the judges.

10. The Meeting decided to deal first with the rules of procedure and then to take up a second group of items on the agenda during the current Meeting, while consideration of the other items were deferred to the next Meeting.

11. The Meeting accepted the President's proposal that the negotiations be conducted at informal open-ended meetings of the whole. To the extent necessary, informal consultations, also open-ended, would be carried out. He indicated that he would report back to the plenary on the progress of work and with proposals on the pending matters.

B. Statement by the Legal Counsel

12. The President called upon the Legal Counsel of the United Nations to make a statement. The Legal Counsel presented the revised draft rules of procedure for the Meeting (SPLOS/2/Rev.1), prepared at its request by the Secretariat. He noted that the revised rules were adapted to make them suitable for all or any purposes for which a Meeting of States Parties may be convened. The revision fully reflected the decisions taken at the previous Meeting, which amended and adopted certain rules, with consequential changes resulting from those amendments.

13. The Legal Counsel also presented the Meeting with the comprehensive record of the work of the Preparatory Commission in pursuance of its mandate to make recommendations on practical arrangements for the establishment of the International Tribunal for the Law of the Sea. He informed the Meeting that the records were being issued as a composite publication in four volumes. 2/ These documents would also serve for the archives of the Tribunal.

14. He further informed the meeting that in accordance with paragraph 11 of General Assembly resolution 49/28 of 6 December 1994, Mr. Gritakumar Chitty had been designated as the staff member charged with making preparations of a practical nature for the organization of the Tribunal, including the establishment of a library, with the necessary Secretariat support. He noted that Mr. Chitty had previously served as Secretary of Special Commission 4 of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea, and prior to that he had served as Secretary of the plenary meetings of the Third United Nations Conference on the Law of the Sea, dealing with the subject of settlement of disputes.

15. The Legal Counsel also informed the Meeting of his proposed visit to Bonn and Hamburg on 29 and 30 June 1995 at the invitation of the Government of Germany, during which he would hold consultations on matters related to arrangements of a practical nature for the establishment of the Tribunal, with the authorities in both Bonn and Hamburg.

16. The President thanked the Legal Counsel and expressed the appreciation of the Meeting for the presentation of the revised provisional rules of procedure and also for the presentation of the composite documentation of the Preparatory Commission contained in four volumes. The Meeting also took note of the designation of the officer charged with making arrangements of a practical nature for the establishment of the Tribunal and also noted that the necessary Secretariat support for the fulfilment of these functions would be provided. The Meeting also took note of the Legal Counsel's impending consultations in Bonn and Hamburg.

C. Credentials Committee

17. The President after consultations proposed the following nine States as members of the Credentials Committee: Cameroon, Croatia, Germany, Malta, Marshall Islands, Philippines, Senegal, Trinidad and Tobago and Uruguay.

18. The Meeting approved the election of the members of the Credentials Committee and decided that the Committee would take up the credentials report at its next Meeting of States Parties. For this purpose it was decided that the Meeting of States Parties convened on 21 and 22 November 1994, the current Meeting (15-19 May 1995) and the meeting to be convened from 27 November to 1 December 1995 be treated as continuing, inter alia, for the purposes of credentials. Attention was drawn to the fact that the credentials presented by delegations should cover attendance at these three meetings.

D. Election of officials

19. The meeting elected Australia as a Vice-President upon the nomination by the Western European and Others Group.

20. The meeting decided to defer consideration of the election of the other officials pending agreement within the regional groups.

E. Rules of procedure

21. The meeting further considered the draft provisional rules of procedure contained in document SPLOS/2/Rev.1. A revision thereto was issued in document SPLOS/2/Rev.2, dated 18 May 1995, on the basis of the deliberations of the Meeting at its first meeting.

22. The revised rules were considered and it was noted that some rules, particularly the rule relating to decisions having financial implications, were still to be developed. Subject to this, as recorded in the footnote to rule 52, the revised draft rules (SPLOS/2/Rev.2) were adopted, taking into account the changes referred to below.

(a) Rule 2. The title of that rule ("Purposes") was amended to read "Application";

(b) In rule 2, last sentence:

(i) After the words "that article", the words "and to any other Meeting of States Parties" were deleted;

(ii) After the word "conference", the words "or Meeting" were deleted;

(c) Rule 3 was revised to read as follows:

"Rule 3

"1. Meetings of States Parties in accordance with article 319, paragraph 2 (e), of the Convention shall be convened by the Secretary-General, when he considers this necessary or in accordance with paragraph 2 below.

"2. Any State Party may request the Secretary-General to convene such a Meeting. The Secretary-General shall immediately inform the other States Parties of the request and inquire whether they concur in it. If within thirty days of the date of communication by the Secretary-General a majority of the States Parties concur in the request, a Meeting shall be convened by the Secretary-General and it shall be held no earlier than thirty days and no later than ninety days after the receipt of such concurrence, unless a Meeting is already scheduled to be held within six months of the request."

The rule would be given a title.

(d) Rule 3 bis would become rule 4 and the rest of the rules would be renumbered accordingly;

(e) A rule would be included to provide for the President and the Registrar of the Tribunal and the Secretary-General of the Authority to be invited to Meetings and to provide information on those institutions as appropriate.

23. The new introductory note to the revised rules (SPLOS/2/Rev.2) refers to the Agreement relating to the Implementation of part XI of the Convention. It is to be noted that the delegation of Mexico was against any reference being made to the Agreement relating to the Implementation of part XI of the Convention either in the context of the definition of the term "Convention" under draft rule 1 or in the context of the introductory note in document SPLOS/2/Rev.2. However, the delegation of Mexico did not oppose, as a compromise, a reference to the Agreement being made in the introductory note to document SPLOS/2/Rev.2. However, the delegation of Mexico requested that its view be recorded that the Agreement should not influence decisions that the States Parties might take about the Tribunal in the light of the fact that the Tribunal was essentially regulated by annex VI to the Convention, its own Statute, rather than part XI.

24. The Secretariat was requested to scrutinize the provisional rules of procedure and thereby ensure consistency in the terminology and cross-referencing as well as making any editorial changes as may be necessary. The Secretariat was also requested to re-issue the document as soon as practicable.

III. OTHER ACTION AND DECISIONS TAKEN BY THE MEETING

A. Organizational matters

25. The Meeting considered the requirements of the Tribunal and agreed on the approach to be taken as regards its establishment, its initial functions and related matters. For purposes of organization and for assessing budgetary implications during the initial financial period, 1 August 1996 to 31 December 1997, the following conclusions and decisions were reached:

(a) Members of the Tribunal:

(i) The members of the Tribunal would hold their first organizational session on 1 October 1996;

(ii) The members of the Tribunal would meet for up to 12 weeks during the period of the budget in order to take the necessary decisions for the internal organization of the Tribunal. Provision would also need to be made for preparatory work by members of the Tribunal;

(iii) The President of the Tribunal would reside at the seat of the Tribunal. All other members of the Tribunal would attend meetings of the Tribunal as and when required;

(iv) The overall remuneration of the members of the Tribunal would consist of three elements: an annual allowance; a special allowance for each day that they were engaged on the business of the Tribunal; and a subsistence allowance for each day that they attend meetings at the seat of the Tribunal or elsewhere. The overall remuneration for the members of the Tribunal should not exceed that of a judge of the International Court of Justice;

(b) Languages. The decisions taken regarding the official and working languages of the Tribunal and the use of other languages are as follows:

(i) The official languages of the Tribunal were English and French. Decisions of the Tribunal should be given in the two official languages and the Tribunal should determine which of the two texts was considered as authoritative;

(ii) A party to a dispute before the Tribunal might use another language for its written and oral pleadings and related documentation: the translation and interpretation into one of the official languages of the Tribunal should be at that party's expense;

(iii) When a language other than one of the official languages of the Tribunal was chosen by the parties to the dispute, and that language was an official language of the United Nations, the decision of the Tribunal should, at the request of any party, be translated into that official language of the United Nations at no cost to the parties;

(iv) Subject to availability of funds, and provided that it would not result in an increase in the budget of the Tribunal, consideration would be given in the future to the translation of final decisions of the Tribunal into the other official languages of the United Nations at the request of any of the States Parties. For that purpose, any contributions from any source would be welcomed. There should be established a voluntary fund to receive such contributions;

(c) Registry. The Meeting considered that arrangements would be needed for the phasing-in of the staff of the Registry and for the transitional phase before the Registry was in place;

(d) Funding. The Meeting also decided that the funding of the budget would be considered and decided together with the budget;

(e) Cost-effectiveness. The Meeting further decided that the principles of cost-effectiveness would apply to all aspects of the work of the Tribunal.

26. The Meeting decided that the Secretariat would be requested to submit the draft budget by 1 September 1995. The draft would be the subject of deliberations at the next Meeting.

B. Preparation of the initial budget

27. The President drew attention to the question of the budget of the Tribunal and the source of the budget or its funding. It was noted that various working papers and draft budgets had been prepared, on the basis of various options, for the consideration and deliberations of the Preparatory Commission. The Meeting having considered the requirements of the Tribunal, agreed on the approach to be taken regarding its establishment, its initial functions and related matters. The President therefore proposed, on the basis of those indications and assumptions, to request the Secretariat to prepare a draft budget. That would permit the Meeting to deliberate on it more concretely and to give an indication of the total budget required for the initial period of the Tribunal. The Meeting concurred with the President's proposal.

28. The approach and assumptions relevant to preparing the draft budget were circulated informally and approved by the Meeting. 3/ They are as follows:

(a) The States Parties intend to adopt the budget for the Tribunal covering an initial period (1 August 1996 to 31 December 1997) at a Meeting to be held in March 1996. This will be preceded by a short Meeting of States Parties, with financial experts, to be held from 27 November to 1 December 1995, to review a draft of the budget;

(b) In preparation for these meetings, the States Parties request the Secretariat to prepare and circulate, by 1 September 1995 at the latest, a draft budget. The estimates are to be based on the indications, assumptions and decisions concerning the members, the languages, the Registry, the funding and the application of the principle of cost-effectiveness as referred to in paragraphs 28 and 29 above.

C. Initial funding or financing

29. While the Meeting was conscious of the provisions of the statute of the Tribunal, it decided to revert to the matter at a later stage. The Meeting noted that there would be a need for transition from the services of the Secretariat to the Registry of the Tribunal.

D. Decisions and recommendations to the General Assembly

30. The Meeting agreed that a timetable for the future meetings should be submitted to the General Assembly with the recommendations of the Meeting. The Secretariat was called upon, in its annual report on the law of the sea, to summarize the deliberations of the Meeting so that the Assembly might be aware of what has been dealt with and take cognizance of matters that might be of interest to the Assembly.

E. Access to the Tribunal

31. The question of access to the Tribunal by States other than States Parties was considered. It was understood that the terms and conditions for access would take into consideration the provisions of Security Council resolution 9 (1946) in relation to access to the International Court of Justice, since that resolution provided a useful precedent, and since the Meeting concurred with the main elements of that resolution.

F. Draft protocol on privileges and immunities

32. It was agreed that the draft protocol on privileges and immunities would be taken up at a later meeting. The document presented by the Preparatory Commission (LOS/PCN/152, vol. I), together with its recommendations, would be examined and a decision would be made as to what would be the forum for its adoption.

G. United Nations laissez-passer and the participation by the Tribunal in the United Nations Joint Staff Pension Fund and the common system of the United Nations

33. It was understood that the use of the United Nations laissez-passer and the participation of the Tribunal in the United Nations Joint Staff Pension Fund (UNJSPF) and the United Nations common system would be dependent upon the relationship arrangement to be made between the Tribunal and the United Nations and that this would require further examination at a later stage.

H. Administrative arrangements

34. Consistent with the specifications for the preparation of the initial budget, determinations were also made by the Meeting with regard to the administrative arrangements for the Tribunal. It was suggested that the date on which the judges take up office should be a date in September 1996. Following the election of the 21 judges, which will take place on 1 August 1996, the President of the Tribunal will, as required by the Convention, be resident at the seat. The other judges would be on call. During the initial period following the election, they will have to convene in order to undertake internal organizational matters of the Tribunal, including the adoption of the rules of procedure (see para. 25 (a) above).

35. The Meeting noted that there would be a need for transition from the services of the Secretariat of the United Nations to the Registry of the Tribunal. The preliminary budget proposal called for above would be required to take those matters more fully into account in the context of the financial obligations (see para. 25 (c) above).

IV. SITE AND PERMANENT HEADQUARTERS OF THE TRIBUNAL

36. At the invitation of the President, the delegation of Germany, as the host country, reported on the status of progress in the preparations based on the presentations previously made to the Preparatory Commission and reflected in its records. Attention was drawn to the records of the Preparatory Commission as contained in document LOS/PCN/152, volume I, pages 20, 21 and 155 to 159. It was reported that the planning for the building and its equipment would be developed on the basis of the notifications previously provided in the reports by the German delegation to the Preparatory Commission. The Meeting was further informed that the equipment and furnishings, which would be provided by the host country, would include equipment for heating, lighting, telephones, telefax, interpreters booths and sanitary and electronic installations. The Meeting was also informed that the tenders for contract to carry out the construction would be issued in July 1995 and that construction would begin by the start of 1996 and the buildings should be ready for use at the end of 1998. In the meantime, the German Government would provide the Tribunal with suitable temporary buildings and interim equipment for its initial internal deliberations as well as for the commencement of its judicial work. The details for the requirements of these would be the matter of discussion between the Legal Counsel of the United Nations and the German authorities during his visit at the end of June 1995.

V. OTHER MATTERS

Convening of the next Meeting

37. The Meeting decided that it would reconvene in New York for a period of one week between 27 November and 1 December 1995. It would consider the preliminary budget to be prepared by the Secretariat and the other pending items on its agenda (SPLOS/1/Rev.1). In view of the consideration of financial matters of that report, delegations were advised to include financial experts on their delegations for that purpose.

38. The following schedule of meetings was agreed upon for the Meetings of States Parties:

(a) Meeting of States Parties (including financial experts) to review a draft initial budget of the Tribunal to be prepared by the Secretariat and to consider pending items on its agenda, 27 November-1 December 1995;

(b) Meeting of States Parties to consider and adopt the draft initial budget of the Tribunal, 4-8 March 1996;

(c) Meeting of States Parties to consider organizational matters of the Tribunal and to elect the members of the Commission on the Continental Shelf, 29 April-10 May 1996;

(d) Meeting of States Parties for the election of the judges of the Tribunal, 29 July-2 August 1996.

Notes

1/ Meeting convened ad hoc on 21 and 22 November 1994. Refer document SPLOS/3, para. 17.

2/ LOS/PCN/152, vols. I-IV. This would constitute the report of the Preparatory Commission under paragraph 10 of resolution I containing recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea.

3/ The terms of the informal proposal circulated by the President and subsequently approved by the Meeting are reflected in paragraphs 28 and 31 of the present report.